

[Order filed & entered 9-15-09]

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IN THE IOWA DISTRICT COURT IN AND FOR WARREN COUNTY

09 SEP 15 AM 8:56  
CLERK OF DISTRICT COURT  
WARREN COUNTY, IOWA

STATE OF IOWA, ex rel., THOMAS J.  
MILLER, ATTORNEY GENERAL OF IOWA  
(99AG23112),

Plaintiff,

vs.

LAMBERTI CONCRETE, INC.,

Defendant.

LAW NO. LA 32056

CONSENT ORDER,  
JUDGMENT AND DECREE

NOW on this 15 day of September, 2009, the Court is presented with the plaintiff's petition seeking civil penalties and injunctive relief pursuant to Iowa Code sections 480.6 and 480.7. The Court having read the petition and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and the subject matter of this action and the parties consent to entry of this Consent Order, Judgment and Decree.
2. Defendant Lamberti Concrete, Inc. admits, for purposes of settlement and for this action only, the violations alleged in paragraph twenty-eight (28) of the Petition at Law.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Defendant Lamberti Concrete, Inc. is assessed a civil penalty of Five Thousand and no/100 Dollars (\$5,000.00) for the violations admitted herein. The defendant shall pay the civil penalty within ten (10) days of the entry of this Consent Order, Judgment and Decree. The defendant shall also pay interest pursuant to Iowa Code section 535.3(1) on any unpaid balance.

Payments of the civil penalty and interest shall be made payable to the State of Iowa and submitted to plaintiff's attorney, David R. Sheridan, at the address noted below.

2. Defendant Lamberti Concrete, Inc., its officers, employees, agents, successors and all other persons, corporations and other entities acting in concert or participating with the defendant who have actual or constructive notice of this injunction, are permanently enjoined from commencing any excavation in the State of Iowa, except during an emergency pursuant to Iowa Code section 480.4(6), without first contacting the statewide notification center (1-800-292-8989 or 811) at least 48 hours prior to the planned excavation, excluding weekends and legal holidays, as required by Iowa Code sections 480.1A and 480.4(1)(a), and providing the information required by Iowa Code sections 480.4(1)(b)(1)-(8) and 480.4(1)(c)(1)-(8); and the defendant is further enjoined from commencing any excavation except under the schedule and pursuant to the terms of each such notification.

3. The Court retains jurisdiction of this matter to insure compliance with the terms of this Order.

4. The costs of this action are taxed to the defendant in the amount of \$ 185 -

(Clerk to enter).

/s/ William J. Jorg  
JUDGE, Fifth Judicial District of Iowa

Approved as to form:

THOMAS J. MILLER  
Attorney General of Iowa


  
DAVID R. SHERIDAN, AT0007176

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[Lawsuit petition filed 9-14-09]

IN THE IOWA DISTRICT COURT IN AND FOR WARREN COUNTY

STATE OF IOWA, ex rel., THOMAS J.  
MILLER, ATTORNEY GENERAL OF IOWA  
(99AG23112),

Plaintiff,

vs.

LAMBERTI CONCRETE, INC.,

Defendant.

LAW NO.

LA 32056

PETITION AT LAW

2009 SEP 14 AM 10:50  
Court of District Court  
WARREN COUNTY, IOWA

COMES NOW Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of  
Iowa, and for claim against Defendant Lamberti Concrete, Inc., states as follows:

**Introduction**

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Lamberti Concrete, Inc., for violations of the "Iowa One Call" statute, Iowa Code chapter 480. The defendant failed to provide prior notice of excavations to the One Call Notification Center, and proceeded with the excavations without any underground facilities having been located and marked.

**Parties**

2. The State of Iowa is a sovereign state of the United States of America.
3. Thomas J. Miller is the duly elected Attorney General for the State of Iowa.
4. Defendant Lamberti Concrete, Inc. is an Iowa corporation with its home office located at 12438 N.E. 64<sup>th</sup> Street, Elkhart, Iowa.

## Definitions

5. "Emergency" means "a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property." Iowa Code § 480.1(3).

6. "Excavation" means "an operation in which a structure or earth, rock, or other material in or on the ground is moved, removed, or compressed, or otherwise displaced by means of any tools, equipment, or explosives and includes, but is not limited to, grading, trenching, tiling, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, and demolition of structures." Iowa Code § 480.1(4).

7. "Excavator" means "a person proposing to engage or engaging in excavation." Iowa Code § 480.1(5).

8. "Operator" means "a person owning or operating an underground facility including, but not limited to, public, private, and municipal utilities. An operator does not include a person who owns or otherwise lawfully occupies real property where an underground facility is located only for the use and benefit of the owner or occupant on the property." Iowa Code § 480.1(8).

9. "Underground facility" means an "item of personal property owned or leased by the operator which is buried or placed below ground for use in connection with the storage or conveyance of, or the provision of services supplying water, sewage, electronic, telephonic, or telegraphic communications, electric energy, hazardous liquids, or petroleum products including natural gas or other substances, and includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such property but does not include sanitary sewer laterals, storm sewer laterals, and water service lines providing service to abutting private properties." Iowa Code § 480.1(10).

## **Jurisdiction**

10. Iowa Code chapter 480, commonly referred to as the "Iowa One Call" statute, establishes a statewide notification center to receive, document and process notices of excavations. The statute also creates certain duties for excavators and owners and operators of underground facilities.

11. Iowa Code section 480.1A provides that a person shall not engage in any excavation unless the requirements of chapter 480 have been satisfied.

12. Iowa Code section 480.4(1)(a) provides that, prior to any excavation, an excavator shall contact the statewide notification center and provide notice of the planned excavation. The notice must be given at least 48 hours prior to the commencement of the excavation, excluding weekends and legal holidays. Notice is provided by calling the notification center at its toll-free number (1-800-292-8989 or 811). The notice for a location inside of a city shall include:

1. a street address or block and lot numbers, or both, of the proposed area of excavation;
2. the name and address of the excavator;
3. the excavator's telephone number;
4. the type and extent of the proposed excavation;
5. whether the discharge of explosives is anticipated;
6. the date and time when excavation is scheduled to begin;
7. approximate location of the excavation on the property; and
8. if known, the name of the housing development and property owner.

Iowa Code §§ 480.4(1)(b)(1)-(8).

13. Pursuant to Iowa Code section 480.4(2), the notification center upon receiving notice from an excavator must then immediately transmit the information contained in the notice to

each operator of underground facilities in the area of the proposed excavation and provide the names of all operators in that area to the excavator. Operators of underground facilities receiving notice must then mark the horizontal location of their underground facilities within 48 hours after receiving the notice, excluding weekends and legal holidays, unless otherwise agreed by the operator and the excavator. Iowa Code § 480.4(3)(a)(1).

14. The only exception to the requirements of Iowa Code section 480.4 is “when an emergency exists.” Iowa Code § 480.4(6).

15. Iowa Code section 480.6(1)(a) provides that a person who violates a provision of chapter 480 is subject to a civil penalty, when the violation is related to natural gas and hazardous liquid pipelines, in an amount not to exceed Ten Thousand Dollars (\$10,000.00) for each violation for each day the violation continues, up to a maximum of Five Hundred Thousand Dollars (\$500,000.00).

16. Iowa Code section 480.6(2) authorizes the Attorney General, upon the receipt of a complaint, to institute legal proceedings necessary to enforce the penalty provisions of chapter 480.

17. Iowa Code section 480.7 authorizes injunctive relief from any violation of Iowa Code chapter 480.

#### **Facts**

18. On or about June 10 and 11, 2009, the defendant conducted excavations to install a sidewalk near 1931 Bristol Street, Norwalk, Warren County, Iowa. The defendant did not contact the One Call Notification Center regarding this excavation location and, thereby, failed to provide notices to operators of underground facilities whose facilities may be affected by the

excavation. Instead, the defendant proceeded with the excavations without any underground facilities having been located and marked on the property.

19. Oneok Partners is the owner and operator of two hazardous liquids underground pipelines, which run beneath the property where the excavations occurred. Oneok Partners warning signs for the two pipelines are located only a few feet from where the defendant conducted the excavations.

20. The Oneok 101 pipeline is an 8-inch diameter steel pipeline which at the time of the excavations was carrying unleaded gasoline under 1100 pounds per square inch of pressure (psi). The pipeline provides a substantial portion of the Des Moines metropolitan area's gasoline fuel needs.

21. The Oneok 102 pipeline is an 8-inch diameter steel pipeline which at the time of the excavations was carrying butane under 1300 psi. The pipeline supplies products to multiple refineries in the Midwest, along with a substantial portion of the propane needs for the Des Moines metropolitan area and Clear Lake and Iowa City, Iowa.

22. Unleaded gasoline and butane are explosive and highly flammable.

23. The excavations went directly over both Oneok hazardous liquids pipelines, and approximately 60 feet from a single family residence and 80 feet from a multi-building apartment complex with approximately 200 residential units.

24. Digging to install a sidewalk constitutes "excavation" as defined in Iowa Code section 480.1(4).

25. At all material times hereto, defendant was an "excavator" as defined in Iowa Code section 480.1(5).



26. A buried hazardous liquids pipeline is an “underground facility” as defined in Iowa Code section 480.1(10).

27. At all material times hereto, there was no “emergency,” as defined in Iowa Code section 480.1(3), that would exempt defendant from the requirement that it contact the statewide notification center prior to the excavations and, thereby, provide notice to owners and operators of underground facilities whose facilities may be affected by the excavations.

### **Violations**

28. On or about June 10 and 11, 2009, Defendant Lamberti Concrete, Inc. engaged in excavations near 1931 Bristol Street, Norwalk, Warren County, Iowa, without first contacting the statewide notification center and providing notice, in violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(b)(1)-(8).

### **Prayer for Relief**

WHEREFORE, Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, requests that the Court:

a. assess a civil penalty against Defendant Lamberti Concrete, Inc., pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(b)(1)-(8), involving hazardous liquids pipelines, not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and

b. issue a permanent injunction enjoining Defendant Lamberti Concrete, Inc. from commencing any non-emergency excavation in the State of Iowa, without first contacting the statewide notification center at its toll-free number (1-800-292-8989 or 811), at least 48 hours prior to the planned excavation, excluding weekends and legal holidays, as required by Iowa Code sections 480.1A and 480.4(1)(a), and providing the information required by Iowa Code sections 480.4(1)(b)(1)-(8) and 480.4(1)(c)(1)-(8); and further enjoining the defendant from commencing any excavation except under the schedule and pursuant to the terms of each such notification.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa

A handwritten signature in black ink, appearing to read "David R. Sheridan", is written over a horizontal line.

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